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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,997	03/15/2004	Robert George Carson	J6872(C)	1648

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EXAMINER

STIGELL, THEODORE J

ART UNIT	PAPER NUMBER
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3763

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/26/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/800,997

Applicant(s)

CARSON ET AL.

Examiner

Theodore J. Stigell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Specification

The disclosure is objected to because of the following informalities: On lines 16-17 of page 5 of the Specification, the Applicant defines the term "comprising" as "including, made up of, composed of, consisting and/or consisting essentially of". This definition is inconsistent with the normal interpretation of the phrases "comprising", "consisting", and "consisting essentially of". See (MPEP 2111.03 [R-3] Transitional Phrases) for the correct interpretation of the phrases.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 3-18 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is impossible to determine the scope of the claim because of the inconsistent definition of the phrase "comprising". The Examiner can not determine if the claims are to be interpreted with opened or closed language.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 8-10, and 13-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Coss (.3,756,242). Coss discloses a microactivation system comprising a microactivation device (10) for microactivation of a skin surface of an individual comprising an actuator device comprising a central shaft (22) having a proximal end and a distal end conjoined with a handle (50), the shaft having a central opening extending from the proximal end to the distal end, a probe (30) capable of being disposed centrally and releasably within the central opening of the device, the probe comprising a cylindrical rod having a distal end and terminating in a surface (32) at the proximal end, the surface having a small cross-sectional diameter and having at least one needle protruding therefrom (the pointed edge being the needle), and a skin benefit agent (air or ultraviolet ray), and further comprising a knurled disc (50) having a threaded opening, and a threaded cylindrical driver rod (34) in screw cooperation with the knurled disc, and wherein the system further comprises a collet (distal end of 34) seated within the central opening and releasably fixed to the driver rod, and wherein the microactivation can provide a skin benefit.

Claims 1 and 3-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Carson et al. (7,087,063). Carson discloses a microactivation system, method for microactivation of epidermal cells, and method of assembling that includes all of the

limitations recited by the Applicant. The skin benefit agent in the reference is also air or ultraviolet rays.

The applied reference has a common inventor/assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Response to Arguments

Applicant's arguments in regards to Coss, filed 1/3/2007, have been fully considered but they are not persuasive. In response to the Applicant's argument that Coss does not disclose a collet releasably seated within the central shaft, the Examiner disagrees. Webster's Online Dictionary defines a collet as "a casing or socket for holding a tool". The distal end of 34 certainly meets this limitation.

In response to the Applicant's argument that Coss does not disclose a skin benefit agent, the Examiner respectfully disagrees. The Examiner first notes that claims 1 and 14 are independent claims drawn to an apparatus. The apparatus recited in these claims has no means for delivering a skin benefit agent. The agent is only later added to the skin. Therefore, the skin benefit agent implies no structural limitation that distinguishes the instant claims from Coss. Furthermore, the skin benefit agents in

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Coss is defined as air or ultraviolet rays (if used outside), both of which have skin benefit qualities.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Theodore J. Stigell whose telephone number is 571-272-8759. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Theodore J. Stigell


Nicholas Lucchesi